



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,781	09/19/2003	Robert C. Michaels	S005 100094	6409

32662 7590 11/30/2004

FELIX L. FISCHER, ATTORNEY AT LAW
1607 MISSION DRIVE
SUITE 204
SOLVANG, CA 93463

EXAMINER

LEWIS, AARON J

ART UNIT PAPER NUMBER

3743

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,781

Applicant(s)

MICHAELS, ROBERT C.

Examiner

AARON J. LEWIS

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/16/2004 (AMENDMENT).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-18 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4,6,7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albu ('149) in view of Rimkus ('491).

As to claim 1, Albu (figs.1,4,5,6) discloses a personal air purifier for insertion in a user's nose comprising: two semi-cylinders (figs.1-7) each having a base with a flat surface and a spherical shape on an end distal from the flat surface; and, a thin flexible band (18) integrally molded with the semi-cylinders and extending between the bases; the semi-cylinders sized such that upon insertion in a nostril the distal, spherical shaped end of each semi-cylinder is located inside the nasal vestibule and the base of each semi-cylinder is tucked in within the nostril just behind the ala, the flexible band extending over the end of the septum of the nose preventing overinsertion of one or both of the semi-cylinders and serving as a handle to remove the air purifier from the nose. Albu (fig.7 and col.5, line 66-col.6, line 27) disclose cylinders (14") which consist of filtering component and which is self-supporting and reticulated (col.6, line 18). While flange (16") is attached to one end of the filtering cylinder, it is disclosed as functioning as a seal (col.4, lines 19-21) for sealing with the inner surfaces of a patient's nostrils.

Art Unit: 3743

The difference between Albu and claim 1 is the two semi-cylinders being of porous foam filter media.

Rimkus, in a personal air purifier, teaches two semi-cylinders being of porous foam filter media (i.e. reticulated polyurethane as disclosed at col.6, lines 15-22) for the purpose of providing a nose filter which is adhesively attached to the inner walls of a patient's nostrils thereby fixing the nose filter in place such that the nose filter and flange do not move during inhalation or exhalation (col.2, lines 37-50).

It would have been obvious to modify the filter material of Albu to make it from porous foam material because it would have provided a nose filter which is adhesively attached to the inner walls of a patient's nostrils thereby fixing the nose filter in place such that the nose filter and flange do not move during inhalation or exhalation as taught by Rimkus.

As to claim 2, Albu (figs.1-7) illustrates the semi-cylinders are tapered from the base toward the distal end.

As to claim 3, Rimkus illustrate the semi-cylinders have a plurality of circumferentially spaced flattened surfaces (26') intermediate the base and distal end.

As to claim 4, Rimkus discloses the foam filter media is reticulated foam (col.6, lines 15-22).

As to claim 6, Rimkus teaches the reticulated foam is selected from polyurethane (col.6, lines 15-22) or silicone chemical family and of the polyether or polyester category.

Art Unit: 3743

As to claim 7, Rimkus (col.6, lines 18-22) teaches the reticulated foam has about 40 to about 130 pores per inch.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Albu in view of Rimkus as applied to claims 1-4,6,7 above, and further in view of Kubik et al. ('682).

The difference between Albu as modified by Rimkus and claim 5 is the foam filter being a dielectric.

Kubik et al., in a personal air purifier, teach filtering material which is a dielectric for the purpose of improving certain aspects of filtering by providing a permanent electric charge (col.3, lines 40-54).

It would have been obvious to further modify the filtering material of Albu to employ a dielectric material because it would have improved filtering properties by providing a permanent electric charge as taught by Kubik et al..

Claim Objections

1. Claims 6 and 7 are objected to because of the following informalities: claims 6 and 7 improperly depend from CANCELLED claim 4. Appropriate correction is required.

Allowable Subject Matter

1. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 8-18 are allowed.

Response to Arguments

Art Unit: 3743

1. Applicant's arguments filed 08/16/2004 have been fully considered but they are not persuasive. Applicant's arguments regarding the "...self-supporting porous reticulated foam filter..." of claim 1 are not persuasive because Albu (fig.7) illustrates a cylinder (10") which is recited to consist of filter (14") and a flange (16"), the flange being disclosed to function as a seal against the inner surfaces of a patient's nostrils. Accordingly, the cylinder illustrated in (fig.7) of Albu is self-supporting inasmuch as the bulk of the cylinder consists of filtering material (14"). Flange (16") is intended to act as a seal and is not disclosed as providing support.

Applicant's arguments regarding the so called passive dielectric material of the instant invention are not persuasive. The language of claim 5 merely requires a filter media that is a dielectric material which is consistent with the filter material taught by Kubik et al.. The method of making the filter medium of Kubik et al. may differ from that used to make the filter medium of the instant invention but these methods are irrelevant because Kubik et al. do teach a dielectric filter material as a finished product and since claim 5 is an apparatus claim that merely requires a dielectric filter medium, Kubik et al. continues to be a valid reference against claim 5.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

Art Unit: 3743

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AARON J. LEWIS
Primary Examiner
Art Unit 3743

Application/Control Number: 10/665,781

Page 7

Art Unit: 3743

Aaron J. Lewis

November 28, 2004